

ALABAMA STATE COMMITTEE OF PUBLIC HEALTH
ALABAMA DEPARTMENT OF PUBLIC HEALTH
OFFICE OF GENERAL COUNSEL
ADMINISTRATIVE CODE

CHAPTER 420-1-4
PETITIONS FOR DECLARATORY RULINGS

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420-1-4-.01 General Provisions.

(1) Legal Authority for Adoption of Rules. Under and by virtue of authority vested in it by the Legislature of the State of Alabama, Code of Ala. 1975, §§22-2-2(6), 41-22-11, the Alabama State Board of Health does hereby adopt and promulgate the following rules governing petitions for declaratory rulings directed to the Alabama State Board of Health.

(2) Definitions (a list of selected terms often used in connection with these rules):

(a) "Board" or "State Board of Health" means the Alabama State Board of Health as constituted under Code of Ala. 1975, §22-2-1.

(b) "Department" means the Alabama Department of Public Health as defined in Code of Ala. 1975, §22-1-1.

(c) "Person" means any legal entity, including a natural person, a partnership, an estate, an association, a trust, or a corporation.

(d) "Petition" means a properly submitted request for a declaratory ruling.

(e) "Petitioner" means a person who requests or has requested a declaratory ruling from the Alabama State Board of Health.

Author: Brian Hale

Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 41-22-11.

History: Filed July 20, 1990. **Amended:** Filed May 20, 2009; effective June 24, 2009.

420-1-4-.02 Petitions For Declaratory Rulings.

(1) Persons Who May Submit. Any person who is substantially affected by any rule of the Board, and any person substantially affected by any state or federal statute enforceable by the Board or by the Department may submit a petition requesting a declaratory ruling.

(2) Scope of Declaratory Ruling. In response to a properly submitted request, the Board may issue a declaratory ruling with respect to the validity of a rule, with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by the Board or by the Department, or with respect to the meaning and scope of any action taken by the Board. The Board shall not issue a declaratory ruling with respect to any other matters.

(3) Effect of Declaratory Ruling. A declaratory ruling is binding on the Board and on the petitioner unless altered or set aside by a court of competent jurisdiction, as provided in Code of Ala. 1975, §41-22-11.

Author: Brian Hale

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420-1-4-.03 Form Of Petitions.

(1) Identification of Petition. Each petition must contain language reasonably calculated to alert the Board that the petitioner is requesting a declaratory ruling pursuant to these rules and Code of Ala. 1975, §41-22-11. A petition which is properly addressed to the General Counsel and which has as a title the words, "PETITION FOR DECLARATORY RULING UNDER THE ALABAMA ADMINISTRATIVE PROCEDURE ACT," in legible type or handwriting, shall be deemed to conform to this requirement.

(2) Written Petitions Required. Each petition must be printed or typewritten, or must be in legible handwriting. Petitions may be in the form of a letter addressed to the General Counsel or in the form of a pleading as might be addressed to a court.

(3) Size of Paper. Each petition must be submitted on standard business letter-size paper (8-1/2 inches by 11 inches).

(4) Return Address. Each petition must be submitted on business letterhead containing a street address or post office box or must

include a return address for the petitioner. The return address must be suitable for delivery of certified mail.

(5) Facts Showing Entitlement. Each petition must state with particularity facts sufficient to show that the petitioner is substantially affected by the rule or statute in question.

(6) Issue Presented and Relief Requested. Each petition must concisely state the issue or issues presented for declaratory ruling. For each issue thus presented, the petition must briefly set forth the terms of a proposed ruling by the Board.

(7) Where to Send Petitions. All petitions must be mailed to the Office of General Counsel, Alabama Department of Public Health, P. O. Box 303017 Montgomery, Alabama, 36130-3017, or hand-delivered to the same at the RSA Tower, 201 Monroe Street, Suite 1540, Montgomery, Alabama 36104. It is the responsibility of the General Counsel to maintain a file of all petitions received and to oversee preparation of responses thereto.

(8) Authority to Submit Petition.

(a) If the petitioner is a natural person, the petition must be signed by that petitioner, by his or her authorized legal counsel, by his or her legal guardian, or, if the petitioner is a minor, by his or her custodial parent or guardian.

(b) If the petitioner is not a natural person, the petition must be signed by an individual duly authorized to submit a petition on behalf of the petitioner.

(c) In all cases except where the petition is signed by the petitioner and the petitioner is a natural person, the individual signing the petition must certify his or her authority to submit the petition in language substantially similar to the following: "Under penalty of perjury I hereby certify that I am duly authorized to submit this petition on behalf of (Name of Petitioner). My relationship to the petitioner is that of (state nature of relationship, such as, attorney, trustee, estate administrator, chief executive officer, general partner, parent or guardian)."

(9) Failure to Follow Form. No document or response from an employee of the Department shall be an official declaratory ruling of the Board when it is sent or made in reply to a communication which is not identified as a petition for declaratory ruling under Rule 420-1-4-.03(1). Any petition which is not properly addressed to the General Counsel is sent at the risk of the petitioner, who shall not receive an official declaratory ruling of the Board until such time, if ever, as the petition is routed to the General Counsel. Any petition which does not otherwise substantially conform to the requirements set forth in these rules shall be

returned to the petitioner with an explanation, but without issuance of a declaratory ruling.

Author: Brian Hale

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420-1-4-.04 Computation Of Time.

(1) Forty-Five-Day Response Period. All properly submitted petitions may be ruled upon by the State Health Officer in the name of the Board within forty-five calendar days of receipt.

(2) When Period Begins to Run. The forty-five-day period shall begin running on the first State of Alabama business day that the petition is received in the Office of General Counsel.

(3) Date Declaratory Ruling Deemed Issued. A declaratory ruling shall be deemed issued when deposited in the U.S. mail, or when actually delivered to the petitioner, whichever is earlier.

Author: Brain Hale

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420-1-4-.05 Response By The Board.

(1) Interim Response.

(a) Each petition received by the General Counsel shall be docketed and examined for conformity to these rules.

(b) If the petition is determined to present an appropriate request for declaratory ruling, and if it is in proper form, then the General Counsel shall promptly notify the petitioner of receipt of the petition, of the date of receipt, of acceptance of the petition as a valid request for an declaratory ruling, and of the forty-five-day time limit within which the petition must be answered.

(c) If the petition presents an inappropriate request for a declaratory ruling, or if the petition does not follow the form required by these rules, it shall be promptly returned to the petitioner by the General Counsel, together with a brief explanation of the reason(s) for its return.

(2) Final Response. The State Health Officer may issue, on behalf of the Board, a declaratory ruling in response to each properly submitted petition. Such ruling shall be sent to the petitioner by

certified mail. The response of the State Health Officer is the final declaratory ruling of the agency, from which appeal may be taken pursuant to the Alabama Administrative Procedure Act.

(3) A petition that is not ruled upon within 45 days of receipt shall constitute a denial of the petition as well as a denial of merits of the petition and shall be subject to judicial review.

Author: Brian Hale

Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 41-22-11.

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